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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,125	03/22/2004	Richard H. Hicks	04-061-WSB	8907

7590 08/23/2007

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EXAMINER	
TOOMER, CEPHIA D	
ART UNIT	**PAPER NUMBER**
1714	
MAIL DATE	**DELIVERY MODE**
08/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/805,125	HICKS ET AL.	
	Examiner	Art Unit	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-13 and 16-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *21-23* is/are allowed.

6)☒ Claim(s) *1-4,6-13 and 16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office action is in response to the amendment filed May 21, 2007.

The rejection of the claims under 35 USC 112, second paragraph is withdrawn in view of the amendment to the claims.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-4, 6, 7, 9-13, 16, 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grangette (US 4,396,400).

Grangette teaches a gas oil composition comprising 100-5000 ppm of water, 100-5000 ppm surfactant (amphoteric or anionic) and 100-5000 ppm co-surfactant. The so-surfactant may be lower alcohols (see abstract; col. 2, lines 10-41; col. 3, lines 1-30; col. 3, lines 41-52; col. 4, lines 4-12). Grangette teaches that it is also known to use cationic and nonionic surfactants in fuel compositions (see col. 1, lines 26-65).

Grangette teaches the limitations of the claims other than the proportions as set forth in the claims. However, Grangette teaches that each component may be present in an amount from 100-5000 ppm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the proportions of the surfactant,

water and co-surfactant through routine experimentation for the best results. As to optimization of results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch,* 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

3. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grangette as applied to claims above, and further in view of Yount (US 4,162143).

Grangette has been discussed above. However, Grangette fails to teach the addition of a solvent. However, Grangette teaches that surfactants are normally blended in solvents such as kerosene (see col. 9, lines 35-45).

It would have been obvious to one of ordinary skill in the art to blend the surfactants of the present composition because teaches that in emulsified fuels the surfactants are normally blended with kerosene.

Response to Arguments

4. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that Grangette is directed to a purpose different from that of the present invention and that Grangette uses a minimum of 100 ppm of water as opposed to Applicant's maximum of **about** 95 ppm.

It is well settled that the term "about" is flexible and allows for a broader range than is stated. In the instant case, "about 95 ppm" of water as set forth in the claims clearly overlaps the 100 ppm of water taught by Grangette. With respect to the inventions leading in opposite directions, there is no requirement that the prior art provide the same reason as the applicant to make the claimed invention.

Applicant argues that unexpected results are obtained with the present invention.

Applicant's data have been considered and are not deemed to constitute unexpected results. The showings are not commensurate in scope with the claims. The claims are directed to generic surfactants and solvents, whereas the data contain very specific compounds. The examiner cannot ascertain if unexpected results are obtained.

Applicant argues that Grangette does not required a solvent and therefore is would not have been obvious to add one to the composition.

Yount teaches that it is conventional to blend surfactants in solvents. Therefore, Applicant has merely performed an act that is well known to those skilled in the art.

Applicant argues that the product of the claimed invention has had great commercial success.

An applicant who is asserting commercial success to support its contention of nonobviousness bears the burden of proof of establishing a nexus between the claimed invention and evidence of commercial success. Commercial success must be commensurate in scope with the claims. In re Tiffin, 448 F.2d 791, 171 USPQ 294 (CCPA 1971). In order to be commensurate in scope with the claims, the commercial success must be due to claimed features, and not due to unclaimed features. Joy Technologies Inc. v. Manbeck, 751 F. Supp. 225, 229, 17 USPQ2d 1257, 1260 (D.D.C. 1990), aff 'd, 959 F.2d 226, 228, 22 USPQ2d 1153, 1156 (Fed. Cir. 1992).

5. Claims 21-23 are allowable because the prior art fails to teach or suggest the claimed compositions.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cephia D. Toomer
Primary Examiner
Art Unit 1714

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